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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

8 SIR JONZ CATER,

9 Plaintiff,

10 v.

11 KING COUNTY, et. al.,

12 Defendants.

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) Case No. C10-1259-RAJ-BAT
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**REPORT AND
RECOMMENDATION**

13 In August, 2010, plaintiff brought a § 1983 action against King County, Hikari Tamura,
14 David Fleming, the King County Sheriff, and unknown defendants. He alleged they were
15 deliberately indifferent to his medical needs and implemented unlawful policies that caused him
16 injury. Dkt. 14. The Court dismissed plaintiff's claims against the King County Sheriff in
17 February 2010, and against Tamura and Fleming in May 2011. Dkts. 24, 36.

18 On July 11, 2011, the remaining defendant, King County, moved for summary judgment.
19 Dkt. 40. Plaintiff filed no response. As discussed below, the Court recommends the motion be
20 **GRANTED** and the case be **DISMISSED** with prejudice.

21 **BACKGROUND**

22 Plaintiff alleges he was placed in the King County Jail's mental health ward after he
23 attempted suicide in February of 2009. Dkt. 14. While there, he claims he found a "regular unit

1 store order form” in his cell on March 31, 2009.¹ Using this form, plaintiff ordered and obtained
2 two envelopes, ten chocolate donuts, and a bottle of aspirin from the jail commissary.² On April
3 1, 2009, he ingested the entire bottle in an attempted suicide. *Id.* at 5-9.

4 Plaintiff contends King County violated his Eighth Amendment rights by being
5 deliberately indifferent to his medical needs by (1) having unlawful policies and procedures that
6 caused him to have access to aspirin; (2) allowing him access to aspirin by giving him a “regular
7 unit store order form”; and (3) failing to have a training program that would have prevented him
8 from having access to aspirin.³

9 DISCUSSION

10 A. Summary Judgment Standard

11 Summary judgment should be granted if no genuine dispute of material fact exists and the
12 moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). The moving party
13 bears the initial burden of demonstrating the absence of a genuine issue of material fact.⁴ Once
14 the moving party has satisfied this burden, the Court should grant summary judgment if the non-
15 moving party fails to present “specific facts showing that there is a genuine issue for trial.”⁵ The
16 evidence submitted by the non-moving party must be sufficient, taking the record as a whole, to
17 allow a rational jury to find for the non-moving party.⁶

18 While pro se litigants should be given more leeway,⁷ they still must comply with the rules
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20 ¹ *Id.* at 6.

21 ² *Id.* at 4.

22 ³ *Id.* at 13-16.

23 ⁴ *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

⁵ *Celotex Corp.*, 477 U.S. at 324.

⁶ *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

⁷ *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam).

1 of procedure that govern other litigants.⁸ Mindful that plaintiff is not a lawyer, the Court advised
2 him in the pretrial scheduling order issued on February 23, 2011 that:

3 When a party you are suing makes a motion for summary judgment
4 that is properly supported by declarations (or other sworn
5 testimony), you cannot simply rely on what your complaint says.
6 Instead, you must set out specific facts in declarations, depositions,
7 answers to interrogatories, or authenticated documents, as provided
8 in Rule 56(e), that contradict the facts shown in the defendant's
9 declarations and documents and show that there is a genuine issue
10 of material fact for trial. If you do not submit your own evidence in
11 opposition, summary judgment, if appropriate, may be entered
12 against you. If summary judgment is granted, your case will be
13 dismissed and there will be no trial. *Rand v. Rowland*, 154 F.3d
14 952, 962-963 (9th Cir. 1998) (emphasis added).

15 Dkt. 23 at 2. Despite this advisement, plaintiff has failed to present anything that shows that as a
16 result of a county policy or failure to train, plaintiff was allowed to obtain aspirin in the county
17 jail. It is therefore appropriate to grant summary judgment, and dismiss this action.

18 **B. Section 1983 Standard**

19 A local government unit, such as King County, can be sued as a "person" under § 1983.⁹
20 A plaintiff seeking to impose liability on a municipality under § 1983 must identify a municipal
21 "policy" or "custom" that caused his or her injury.¹⁰ A mere conclusory allegation of
22 constitutional harm is insufficient without specific, plausible facts to support it. *Ascroft v. Iqbal*,
23 129 S. Ct. 1937, 1951 (2009).

24 **C. Sufficiency of the Amended Complaint**

25 As an initial matter, plaintiff's amended complaint contains nothing more than bald or
26 conclusory assertions that King County policies or the lack of training caused his injuries. *See*

27 ⁸ *King v. Atiyeh*, 814 F.2d 565, 567 (1987).

28 ⁹ *Monell v. Dep't of Soc. Servs., of City of New York*, 436 U.S. 658, 691 (1978).

29 ¹⁰ *Bryan County Commissioners v. Brown*, 520 U.S. 397, 403 (1997) (citing *Monell*, 436 U.S. at
30 694).

1 Dkt. 14. To survive dismissal, plaintiff must present sufficient factual matter that states a claim
2 to relief that is plausible on its face. *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 150 (2009). “A claim
3 has facial plausibility when the plaintiff pleads factual content that allows the court to draw the
4 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* The
5 plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer
6 possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are
7 ‘merely consistent with’ a defendant’s liability, it ‘stops short of the line between possibility and
8 plausibility of ‘entitlement to relief.’” *Id.* (citations omitted).

9 Plaintiff’s amended complaint leaves the Court with only conclusory statements that do
10 not state a claim for relief. As the Supreme Court discussed in *Ashcroft*, “[a] pleading that offers
11 ‘labels and conclusions’ or ‘a formulaic recitation of the elements of a cause of action will not
12 do. Nor does a complaint suffice if it tenders ‘naked assertion[s]’ devoid of further factual
13 enhancement.”” *Ashcroft v. Iqbal*, at 1949. On its face, then, plaintiff’s amended complaint fails
14 to set forth sufficient facts to state a claim for relief against King County under § 1983 and
15 should be dismissed for that reason.

16 **D. The Undisputed Facts Support Defendant’s Motion for Summary Judgment**

17 Even if the Court were to conclude the amended complaint sets forth sufficient facts to
18 state a claim for relief, the uncontroverted facts submitted by King County establish King
19 County is entitled to summary judgment. Defendant have submitted declarations showing King
20 County is not liable under § 1983. Dr. Brian Waiblinger, M.D., was the director of the jails
21 psychiatric services at the time plaintiff was held at King County jail. Dkt. 42. Dr. Waiblinger
22 avers due to mental problems, plaintiff was on suicide watch and carefully monitored. Plaintiff’s
23 mental status improved and he was taken off of suicide watch on March 12, 2009. On April 23,

1 2009, plaintiff told the jail psychiatric staff he swallowed a bottle of aspirin that he “bought.” *Id.*
2 at 4. On July 7, 2009, plaintiff told staff that he asked a trustee for bottles of aspirin and a
3 commissary slip so he could prove his lawsuit against the County. *Id.* Dr. Waiblinger avers all
4 County policies regarding inmate suicide prevention for plaintiff were followed. *Id.*

5 Corrinna Hyatt, avers she is a major at the County jail and has worked at the jail for 22
6 years. She avers that during that time, she is unaware of any other incident where an inmate was
7 able to access commissary items to attempt suicide in the way plaintiff did. Dkt. 43.

8 Defendant also attached copies of its policies and procedures regarding suicide
9 prevention including training that staff receives to prevent suicide in the jail (Dkt. 43) and a copy
10 of its commissary procedures and policies that contain limitations and restrictions on what
11 certain inmates may buy. Dkts. 44, 45.

12 Plaintiff has not presented anything disputing this. As such, the Court considers the facts
13 defendant has presented as undisputed for purposes of the motion, and concludes defendant is
14 entitled to summary judgment. *See* Fed. R. Civ. P. 56 (e)(2) and (3). The uncontested
15 declarations and exhibits King County has submitted establish (1) King County does not have
16 practices and customs that would enable jail inmates to attempt suicide; (2) King County had no
17 notice plaintiff would attempt suicide as there is no history of jail inmates obtaining aspirin to
18 attempt suicide in the way plaintiff did, and plaintiff was off of suicide watch when he obtained
19 the aspirin; (3) there is evidence plaintiff obtained the aspirin by persuading another inmate to
20 give him a regular commissary order form; and (4) King County has procedures and policies to
21 properly train its jail staff regarding suicide prevention.

22 Under Rule 56, the Court may give plaintiff more time to respond to defendant’s motion.
23 This is not appropriate, here. This case was initiated in August, 2010 and the summary judgment

1 motion has been pending since July 11, 2011; plaintiff has had ample time to respond to the
2 motion, or request additional time.

3 **CONCLUSION**

4 For the foregoing reasons, the Court recommends the motion for summary judgment be
5 **GRANTED** that this matter be **DISMISSED** with prejudice. Any objections to this
6 Recommendation must be filed and served upon all parties no later than **August 29, 2011**. If no
7 objections are filed, the matter will be ready for the Court's consideration on that date. If
8 objections are filed, any response is due within 14 days after being served with the objections. A
9 party filing an objection must note the matter for the Court's consideration 14 days from the date
10 the objection is filed and served. The matter will then be ready for the Court's consideration on
11 the date the response is due. Objections and responses shall not exceed twelve pages. The
12 failure to timely object may affect your right to appeal.

13 A Proposed Order accompanies this Report and Recommendation. The Clerk is directed
14 to provide a copy of this Report and Recommendation to the parties and to the Honorable
15 Richard A. Jones.

16 DATED this 8th day of August, 2011.

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19 BRIAN A. TSUCHIDA
20 United States Magistrate Judge
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